IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Crl.MC.No. 2308 of 2007()

AGAINST THE ORDER IN CMP 2305/07& CMP 2306/07 IN ST.2441/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

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PETITIONER: ACCUSED

P.V.RAJAN,
DRIVER, PROGRAMME OFFICE, DISTRICT ICDS CELL,
JAIHIND MARKET BUILDING, TRICHUR.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS: COMPLAINANT AND STATE

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1. ABBAS K., S/O. IBRAHIM,
KODALIYIL HOUSE, KODUMUNDA P.O.,
PATTAMBI, REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER, V.K.IBRAHIM, S/O. KUTTY HASSAN,
PUTHENPEEDIKAYIL HOUSE, PILAKKAD POST, VARAVOOR.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2308 of 2007

Dated this the 27th day of July 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. He has come to this court with the grievance that adverse orders have been passed against him in C.M.P.Nos.2305 and 2306 of 2007 by the learned Magistrate. He has not been given copies of those orders. Those orders deserve to be set aside. The case is at the defence stage.

2. The report of the learned Magistrate was called for. The learned Magistrate has forwarded to this court the copies of the orders passed. The learned counsel for the petitioner has been granted opportunity to peruse and make his submissions on those orders. The learned counsel for the petitioner submits that he now wants to challenge only the order in C.M.P.No.2305/2007. The matter has reached the stage of defence. At the defence stage, the petitioner wanted the complainant's passport to be produced. According to the

complainant, the complainant had paid money personally to the accused in India. At the time of trial, the complainant was not available. The case was conducted for him by his power of attorney holder. The power of attorney holder had tendered evidence before court. The learned counsel for the petitioner submits that in the course of cross-examination, a very specific stand was taken that the complainant was not available in India at the time when the alleged personal transaction between the complainant and the accused took place. It is the submission of the learned counsel for the petitioner that the power of attorney holder had made candid admission that he cannot specify the date on which the complainant had gone abroad and returned. So, according to the learned counsel for the petitioner, there is no effective evidence to counter his contention that the complainant was not available in India on the date when the alleged transaction took place.

3. To further fortify this contention, the petitioner wanted the power of attorney holder to produce the passport of the complainant. That petition was dismissed by the learned Magistrate by the order in C.M.P.No.2305/07. It is prayed that

the said order may be set aside and the petitioner may be granted an opportunity to get the original passport or atleast a copy thereof produced before the court so that he can advance his contentions that the complainant was not available in India, more effectively. This, in short is the prayer.

4. I have considered the contentions of the learned counsel for the petitioner. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this court under Section 482 Cr.P.C. Law frowns upon challenge against interlocutory orders. This policy of the law is clearly reflected in Section 397(2) Cr.P.C which proscribes challenge in revision against interlocutory orders.

5. I am of the opinion that it is not necessary in the facts and circumstances of this case to invoke the powers under Section 482 Cr.P.C. The learned counsel for the petitioner himself contends that it is the burden on the complainant to prove the issue of the cheque and serious doubts have already been generated on this aspect by the cross-examination of the power of attorney holder of the complainant. I am satisfied that it need only be observed that the petitioner's right to raise the

contention that the complainant has not discharged the burden shall remain. He can raise that contention before the learned Magistrate. He can, later, after the disposal of the case, in the appeal and revision, raise the contention that the impugned order is not justified and warrants interference.

6. I make it clear that I have not intended to express any final opinion on any of the questions raised. I take only the view that powers under Section 482 Cr.P.C do not deserve to be invoked at the moment.

6. In the result, this petition is dismissed. I may hasten to observe that the petitioner's right to raise all contentions before the learned Magistrate and later, if necessary, to raise the contention before the appellate and revision courts that the impugned order is wrong shall remain unfettered by the dismissal of this Criminal Miscellaneous Case.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

Crl.M.C.No.2308 of 2007

Dated this the 20th day of July 2007

O R D E R

The grievance of the petitioner is that though an application for copy has been made for the common order passed in Crl.M.P.Nos.2305 and 2306 of 2007, no such copy has been given and thereby fettering his option to challenge the order.

2. Call for remarks from the learned Judicial First Class Magistrate Court, Pattambi. The learned Magistrate shall forward to this court a copy of the order, forthwith.

3. The petitioner submits that the copy application filed has been pending. Every effort shall be made to give a copy to the petitioner also.

4. Call on 27/7/2007. There shall be an interim stay against final disposal of the case till then.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007